IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10556 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARBHAI NALUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10556 of 2000

MR AV PRAJAPATI for Petitioner No. 1-18

MS MANISHA LAVKUMAR Ld. AGP for Respondent No. 1-2

MR MITUL K SHELAT for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 08/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard Mr. A.V.Prajapti learned counsel for the petitioners, Ms. Manisha Lavkumar learned counsel for respondents nos. 1 and 2 and Mr.M.K.Shelat learned counsel for the respondent no.3.

2. Ms. Manisha Lavkumar learned AGP appearing for the respondents nos. 1 and 2 has placed on record the copy of the communication dated 1.4.2002 along with the copy of the possession receipt, indicating the taking of the possession by the Government and handing over of the same to the Acquiring Body - GIDC. It is suggested therefrom that the Government took the possession of the land in question on 17.10.2000 and the possession of the land in question was handed over to Acquiring Body by the Government on 17.2.2001.

3. In this writ petition under Article 226 of the Constitution of India, the petitioners, covered under the same Notification under Section 4 of the Land Acquisition Act (for short "the Act"), have been praying for the relief of quashing and setting aside the action of the respondents in passing the award under Section 11A of the Act after lapse of more than 2 years for acquisition of the land of the petitioners, and also for a declaration that the proceedings for acquiring the land of the petitioners under the Act has lapsed and vitiated since more than two years have passed from the date of publication of the declaration made under Section 6 of the Act in view of the provisions of Section 11A of the Act.

4. The Notification under Section 4(1) of the Act came to be issued on 19.8.1997. The declaration under Section 6 of the Act came to be issued on 28.8.1998. Whereas the award under Section 11A of the Act came to be declared on 17.10.2000.

5. It is stated by Mr. Prajapati learned counsel for the petitioners that after the declaration of the award under Section 11A of the Act, the petitioners have accepted the compensation awarded by the Special Land Acquisition Officer under the protest. It is also submitted that petitioners have also made a request for reference under Section 18 of the Act to the Special Land Acquisition Officer.

It is stated by Ms. Manisha Lavkumar learned AGP that the request for reference has been made by the claimants and the said request has been received by the Special Land Acquisition Officer, but it is not known

whether the reference has been made to the Reference Court by the Special Land Acquisition Officer or not.

6. On behalf of the respondents, reliance has been placed in the case of Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, reported in AIR 2000 SC 671, wherein the Hon'ble Supreme Court has, in paragraphs nos. 16 and 17, observed as under :

Para.16

"The other owner Shah Hyder Beig, however, did not put forth any claim for any specific amount but claimed only the market value of the land together with 15 per cent. solatium and the cost of the building now standing on the land. Incidentally, the other owner is a resident of England and executed a power of attorney in favour of Mohd. Ali Beig to act on his behalf in the proceeding before the authorities and to received the amount of compensation. The power of attorney stands recorded in England in Febrary,1973. While it is true that the evidence tendered by the respondents during the course of hearing was without prejudice qua the reservation of rights to challenge the same but the factual backdrop in its entirety however in our view does not indicate any challenge to the notice of acquisition."

Para.17

"In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases (C.Padma v. Dy. Secretary to the Govt. of T.N., reported in (1997) 2 SCC 627. This Court observed as below:-

"The admitted position is that pursuant to the notification published under S.4(1) of the Land Acquisition Act,1894 (for short "the Act") in GOR No.1392 Industries, dated 17.10.1962, total extent of 6 acres 41 cents of land in Madhavaram village, Saidapet Taluk, Chengalpatta District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30.4.1964.

> Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in G.O.Ms. No.816 Industries, dated 24.3.1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 6th respondent which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in G.O.Ms. No.439 Industries, dated 10.5.1985. In G.O.Ms. No. 546 Industries, dated 30.3.1986, the same came to be approved of. Then the appellants challenged the original G.O.Ms. No. 1392 Industries, dated 17.10.1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

As seen above, the possession of the land in question has been taken from the claimants on 17.10.2000 by the State and the same has been handed over to the Acquiring Body - GIDC on 17.2.2001.

7. The ratio laid down in the case of Municipal Council, Ahmednagar (supra) applies to the present case.

8. In view of the above, the petition is liable to be dismissed as covered by the decision in the case of Municipal Council, Ahmednagar (supra). Special Civil Application is dismissed accordingly. Rule is discharged.

(N.G.Nandi,J.)

(J.R.Vora,J.)

(vipul)